

CALIFORNIA INSTITUTE OF TECHNOLOGY

JET PROPULSION LABORATORY

GENERAL PROVISIONS: ARCHITECT-ENGINEER SUBCONTRACT

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GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

Release of Information, Form JPL 1737

Notification to Prospective Subcontractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385

Certifications, Form JPL 2892

Asbestos Notification, Form JPL 2895

Notice of Potential Tax Withholding

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-36 - 06/98]

(This Article applies to Subcontracts that exceed \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

ANTI-KICKBACK PROCEDURES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.203-7 – 07/95]

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, First-tier Subcontractor, or First-tier Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a First-tier Subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a Subcontract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
- (6) "First-tier Subcontract," as used in this Article, means a Subcontract or contractual action entered into by a prime Subcontractor or First-tier Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) "First-tier Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime Subcontract or a First-tier Subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher-tier subcontractor.
- (8) "First-tier Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a First-tier Subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the Subcontract price charged by a prime Subcontractor to the United States or in the Subcontract price charged by a First-tier Subcontractor to a prime contractor or higher-tier subcontractor.

(c)

- (1) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (2) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Subcontract and/or (ii) direct that the Subcontractor withhold, from sums owed a First-tier Subcontractor under the Subcontract, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of

this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Subcontractor shall notify JPL when the monies are withheld.

- (4) The Subcontractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all First-tier Subcontracts under this Subcontract.

ARCHITECTURAL DESIGNS AND DATA - INSTITUTE AND GOVERNMENT RIGHTS

[A - E – 09/04]

The Government and the Institute may duplicate, use and disclose in any manner and for any purpose, and have others so do, all data, such as, for example, drawings, designs, specifications, architectural designs of buildings and structures, notes and other architect-engineer work produced in the performance of this Subcontract, or in contemplation thereof, and all as-built drawings produced after completion of the work, and without additional cost to the Institute or the Government; and with respect thereto the Subcontractor agrees to and does hereby grant to the Institute and the Government a non-exclusive, irrevocable, royalty-free license throughout the world for governmental purposes to use, publish, translate, reproduce, deliver, perform, dispose of, and authorize others so to do, all such data which the Subcontractor may cover by copyright and all architectural designs as to which it may assert any rights or establish any claim under the design patent or copyright laws. With regard to copyrighted material, any copyright license required in order to perform work under this First-tier Subcontract is freely transferable to any successor-in-interest of JPL, a successor Subcontractor to operate JPL, or the Government.

The Subcontractor shall use due care not to deliver or include in data produced or used in the performance of this Subcontract any copyrighted data not licensed hereunder without the prior written approval of the Institute and the Contracting Officer, unless it provides the written permission of the copyright owner for the uses specified herein. The Subcontractor for a period of three years after completion of the project agrees to provide access to all such data on the request of the Institute or the Government.

ASBESTOS NOTIFICATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04]

(This Article applies if any of the Subcontract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Subcontractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Subcontractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all Subcontractor's personnel, including First-tier Subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all First-tier Subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

ASSIGNMENT, NOVATION AND TRANSFER

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, CIS, RSA– 09/04] [FAR 52.244-2 – 08/98]

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.232-23(a) – 01/86]

- (a) The Subcontractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
 - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Subcontract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Subcontract.

- (3) Two copies of the notice of assignment, signed by the Subcontractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Subcontractor provides JPL with a notification that the amount due or to become due under this Subcontract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Subcontract until JPL is furnished with either (i) verification or denial of assignment from the Subcontractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Subcontractor shall not furnish or disclose to any assignee under this Subcontract any classified document (which term includes this Subcontract if access to classified material is authorized under this Subcontract) or information pertaining to classified work under this Subcontract unless JPL authorizes such action in writing.
 - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Subcontractor's duty to perform the services or provide the supplies required by this Subcontract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The Subcontractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Subcontract; provided, however, that nothing contained herein shall be deemed to prohibit the Subcontractor from placing purchase orders and First-tier Subcontracts, subject, however, to the provision of this Subcontract entitled "First-tier Subcontracts." Delegation of duties without such consent is void.

AUDITS RECORDS – NEGOTIATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA –09/04] [FAR 52.215-2 – 06/99]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Subcontract, or any combination of these, the Subcontractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the Subcontract.

If this is a facilities acquisition, the obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this Subcontract.

- (c) Cost or Pricing Data. If the Subcontractor has been required to submit cost or pricing data in connection with pricing action relating to this Subcontract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to:
 - (1) The proposal for the Subcontract, First-tier Subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the Subcontract, First-tier Subcontract, or modification; or
 - (4) Performance of the Subcontract, First-tier Subcontract, or modification.
- (d) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or a First-tier Subcontract hereunder.

- (2) This paragraph (d) may not be construed to require the Subcontractor or First-tier Subcontractor to create or maintain any record that the Subcontractor or First-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Subcontract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Subcontract. In addition:
 - (1) If this Subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Subcontractor shall make available records relating to appeals under the "Disputes" Article or to litigation or the settlement of claims arising under or relating to this Subcontract until such appeals, litigation, or claims are finally resolved.
- (g)
 - (1) The Subcontractor shall insert all of the provisions of this Article, including this paragraph (g), in all First-tier Subcontracts under this Subcontract that exceed \$100,000, and:
 - (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (B) For which cost or pricing data are required; or
 - (C) That requires the First-tier Subcontractor to furnish reports as discussed in paragraph (e) of this clause.
 - (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.
- (h) If this is a cost-reimbursement Subcontract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Subcontract.

AUTHORITY OF JPL REPRESENTATIVES

[CT, FP-R&D, T&MC, LH/T&M, CREI, A – E, RSA – 09/04]

- (a) No request, notice, authorization, direction or order received by the Subcontractor and issued either pursuant to a provision of this Subcontract, to a provision of any document incorporated in this Subcontract by reference, or otherwise, shall be binding upon either the Subcontractor or the Institute unless issued or ratified in writing by the JPL Subcontracts Manager, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Subcontractor shall immediately notify, in writing, the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Subcontract amount or amount allotted to this Subcontract; or (iii) otherwise be the basis for assertion of a claim by the Subcontractor under any provision of the Subcontract.

AUTHORIZATION AND CONSENT

[CT, FP-R&D, T&MC, LH/T&M, CREI, A – E, RSA – 09/04] [FAR 52.227-1 – 07/95, ALT I]

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any First-tier Subcontract at any tier.
- (b) The Subcontractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all First-tier Subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this Article from any First-tier Subcontract, under or over \$100,000, does not affect this authorization and consent.

BANKRUPTCY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.242-13, 07/95]

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the Subcontract, written notification of the bankruptcy to the JPL Subcontracts Manager responsible for administering the Subcontract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL Subcontract numbers for all JPL Subcontracts against which final payment has not been made. This obligation remains in effect until final payment under this Subcontract.

CHANGES

[A - E – 09/04] [FAR 52.243-1, Alt. III – 04/84; FAR 52.243-6 – 08/87]

- (a) JPL may at any time, by written Unilateral Modification, and without notice to the sureties, if any, make changes within the general scope of this Subcontract in the services to be performed.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performing this Subcontract, whether or not changed by the Modification, JPL shall make an equitable adjustment in (i) the Subcontract price, the time of performance, or both; and (ii) other affected terms of the Subcontract, and shall modify the Subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the Modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Subcontract.
- (d) JPL may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Subcontractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (e) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, JPL shall have the right to prescribe the manner of the disposition of the property.
- (f) Nothing in this Article shall excuse the Subcontractor from proceeding with the Subcontract as modified.
- (g) No services for which an additional cost or fee will be charged by the Subcontractor shall be furnished without the prior written authorization of JPL.

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A - E - 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Subcontractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefore, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph

(a) above by the Subcontractor or any of its First-tier Subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.

- (c) Subcontractor agrees to insert this Article, including (c), in all First-tier Subcontracts and purchase orders hereunder.

CONTRACTUALLY REQUIRED NOTICES

[A - E – 09/04]

Unless otherwise specified in this Subcontract, any notice which the Subcontractor is required to provide to JPL under any provision of this Subcontract shall be directed to the Manager, Acquisition Division, JPL, or the Acquisition Division Manager's authorized representative.

DATA REMOVAL FROM COMPUTERS

[CT, FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC, FPC, CREI, A – E, RSA – 09/04] [NPG 2810]

The Subcontractor shall completely overwrite or degauss the media containing all data (which can include sensitive, Privacy Act, proprietary, and mission critical data) from hard drives and other computer storage devices and remove licensed software from Government-owned computers before such computers leave the control of the Subcontractor organization by transfer or disposal. JPL data shall also be removed from Subcontractor-owned computers when the computer will be no longer used for this Subcontract. The Subcontractor shall archive all data required to be retained, pursuant to the "Rights in Data - General" Article. Guidance on what constitutes mission-critical data and sensitive information (such as business and restricted technology information and scientific, engineering, and research information) is contained in NASA Procedure and Guidelines for Security of Information Technology (NPG) 2810, available on the worldwide web or from the JPL Subcontracts Manager. Proprietary data consists of trade secrets and other commercial or financial information confidential to the individual owner or organization. Proprietary data is normally labeled as such. Trade secrets or commercial or financial information that has been released to the public or is otherwise in the possession of persons other than the individual owner or organization is in the public domain and may no longer be entitled to proprietary protection.

The Subcontractor shall submit to JPL a written certification that media containing all JPL data has been overwritten or degaussed from computers when returned to JPL or disposed of.

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.211-15 – 09/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

DEFINITIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A – E, RSA – 09/04] [FAR 52.202-1 – 12/01]

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "commercial component" means any component that is a commercial item.
- (c) The term "commercial item" means (see related term "nondevelopmental item," below):
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes and that:
 - (A) Has been sold, leased, or licensed to the general public; or
 - (B) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:

- (C)
 - (A) Modifications of a type customarily available in the commercial marketplace; or
 - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if:
 - (A) Such services are procured for support of an item referred to in paragraph (c)1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services:
 - (A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or supplier, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (i) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
- (8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term "component" means any item supplied as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11 (a).
- (e) The term "Subcontract amount" means the Subcontract price, the estimated cost and fee, if any, or the ceiling price of the Subcontract.
- (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) The term "Subcontractor" means the selling party to this Subcontract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Subcontractor" is the first tier First-tier Subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (h)
 - (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Subcontract, unless otherwise indicated.
 - (2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this Subcontract if any.

- (i) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (j) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (k) The term "Institute" means the California Institute of Technology as a party to this Subcontract.
- (l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. The rights of JPL under this Subcontract are the rights of the California Institute of Technology as a party to this Subcontract.
- (m) The term "JPL Subcontracts Manager" means the individual authorized to issue and administer this Subcontract for JPL.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Subcontract, unless otherwise indicated.
- (p) The term "nondevelopmental item" means:
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (r) The term "Prime Contract" means the Subcontract between the Institute and NASA for the United States of America (herein called the Government).
- (s) The term "Schedule" means the statements in the order/Subcontract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (t) The term "First-tier Subcontract," as used in this Subcontract, includes, but is not limited to, purchase orders under this Subcontract.
- (u) The terms "United States" or "U.S." mean the United States of America.

DRUG-FREE WORKPLACE REQUIREMENTS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.223-6 - 05/01]

The Subcontractor agrees to inform all Subcontractor personnel who work at JPL or are involved with any JPL activity on or off JPL premises that they are required to comply with the JPL "Drug Free Workplace Policy." The Subcontractor further agrees to inform all Subcontractor personnel, working at JPL or involved with any JPL activity on or off JPL premises that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Subcontractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.222-37 - 12/01]

(This Article is applicable to this Subcontract (and any First-tier Subcontract) when the Article at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans is applicable.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

ENVIRONMENTAL COMPLIANCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.223-11 - 05/01; 52.223-12 - 05/95]

(This Article is applicable to all Subcontracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

- (a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the Subcontractor shall comply with the provisions set forth below.
- (b) The Subcontractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7671h) as each or both apply to this Subcontract.
- (c)
 - (1) Definition. "Ozone-depleting substance", as used in this clause, means any substance the Environmental Protection Agency (EPA) designates in 40 CFR Part 82 as: (i) Class I, including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (ii) Class II, including, but not limited to, hydrochlorofluorocarbons.
 - (2) The Subcontractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) (*)_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(* The Subcontractor shall insert the name of the substance(s))

EQUAL OPPORTUNITY

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.222-26 - 04/02]

(The following Article is applicable unless this Subcontract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees who were not recruited within the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Subcontract], the Subcontractor has been or is awarded nonexempt Federal Subcontracts and/or First-tier Subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with FAR 52.222-26 during performance of this Subcontract. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.222-35 - 12/01]

(This Article applies to Subcontracts of \$25,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

FACSIMILE COPIES ACCEPTABLE

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04]

The parties agree that facsimile (fax) copies of Subcontract documents are just as binding as originally executed documents.

FEDERAL, STATE, AND LOCAL TAXES

[FP-NR&D, FP-R&D, FPC, A - E - 09/04] [FAR 52.229-3 - 04/03]

- (a) Items of tangible personal property to be delivered under this Subcontract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).

- (b) FAR 52.229-3 is hereby incorporated by reference, except that the letters "JPL" shall be substituted for the words "the Contracting Officer" and the words "the Government" wherever they appear.

FIRST-TIER SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS

[A - E – 09/04] [FAR 52.244-4 – 08/98]

Any First-tier Subcontractors and outside associates or consultants required by the Subcontractor in connection with the services covered by the Subcontract will be limited to individuals or firms as are specifically set forth in the Schedule of this Subcontract. The Subcontractor shall obtain JPL's written consent before making any substitution for these First-tier Subcontractors, associates, or consultants.

FIRST-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.244-6 – 05/02]

- (a) Definition.
- (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
 - (2) "First-tier Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or First-tier Subcontractor at any tier.
- (b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its First-tier Subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Subcontract.
- (c)
- (1) The Subcontractor shall insert the following clauses in First-tier Subcontracts for commercial items:
 - (i) 52.219-8, Utilization of Small Business Concerns (Oct 200) (15 U.S.C. 637(d)(2)(3)), in all First-tier Subcontracts that offer further First-tier Subcontracting opportunities. If the First-tier Subcontract (except First-tier Subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the First-tier Subcontractor must include 52.219-8 in lower tier subcontracts that offer First-tier Subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
 - (2) While not required, the Subcontractor may flow down to First-tier Subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Subcontractor shall include the terms of this Article, including this paragraph (d), in First-tier Subcontracts awarded under this Subcontract.

GOVERNMENT PROPERTY

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A - E – 09/04] [FAR 52.245-4 –06/03]

- (a) JPL shall deliver to the Subcontractor, at the time stated in the Schedule, or, if not so stated, in sufficient time to enable the Subcontractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, JPL shall equitably adjust affected provisions of this Subcontract in accordance with the Changes Article when:
- (1) The Subcontractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.

- (b) Title to JPL-furnished property shall remain in the Government. The Subcontractor shall use the JPL-furnished property only in connection with this Subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except:
 - (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this Subcontract; or
 - (3) As otherwise provided for by the provisions of this Subcontract.
- (d) Upon completing this Subcontract, the Subcontractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Subcontract or previously delivered to JPL. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid as directed by JPL.
- (e) If this Subcontract is to be performed outside the United States and its outlying areas, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.
- (f) If JPL-furnished property has been provided to the Subcontractor under this Subcontract, the Subcontractor shall submit NASA Form 1018, "The Report of Government-Owned/Subcontractor-Held Property" (or equivalent) (or a negative report, if applicable); to JPL monthly and annually (date to be determined by JPL).

INJURY AND ILLNESS PREVENTION PROGRAM

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04]

All Subcontractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

INSURANCE AND INDEMNIFICATION – A - E

[A - E – 09/04] [FAR 52.228-5 - 01/97]

- (a) Insurance. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.
 - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Subcontract operations are so commingled with the Subcontractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Subcontractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Subcontractor is qualified pursuant to statutory authority to do so.
 - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
 - (3) Professional Liability. The Subcontractor agrees that it will be responsible to the Government and the Institute for, and indemnify and hold harmless the Government and the Institute, its trustees, officers and employees from, any loss, cost, damage, expense or liability or any suit or claim therefore, by reason of breach of professional duty, arising out of or in connection with the performance of this Subcontract, occasioned in whole or in part by the error, omission or negligent act of the Subcontractor, its employees or agents. The Subcontractor will at all times carry such professional liability insurance as will protect it from the foregoing risks with an insurance carrier and in a form satisfactory to the Institute and in an amount of not less than \$1,000,000, unless a lesser amount is specified in the Schedule of this Subcontract.

- (b) Insurance Certificates and Endorsements. Before commencing work under this Subcontract, the Subcontractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the Subcontract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (ii) until 30 days after the insurer or the Subcontractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Subcontract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Subcontractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Subcontractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Subcontractor.
- (c) Indemnification. The Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefore, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Subcontractor or any of its First-tier Subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.203-12 – 06/97]

(This Article applies if this Subcontract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

METHOD OF PAYMENT

[A - E – 09/04]

- (a) Estimates shall be made monthly of the amount and value of the work and services performed by the Subcontractor under this Subcontract that meet the standards of quality established under this Subcontract. The estimates shall be prepared by the Subcontractor and accompanied by any supporting data required by JPL.
- (b) Upon approval of the estimate by JPL, payment upon properly executed vouchers shall be made to the Subcontractor, as soon as practicable, of 90% of the amount, less all previous payments. Also, whenever JPL determines that the amount retained is in excess of the amount adequate for the protection of the Institute, JPL may release the excess amount to the Subcontractor.
- (c) Upon satisfactory completion by the Subcontractor and acceptance by JPL of the work done by the Subcontractor under this Subcontract, the Subcontractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work.
- (d) JPL may elect to either send payments to the Subcontractor by mail or require the Subcontractor to accept electronic payments. Payment shall be deemed to have been made on the date the check is mailed or the date of payment by electronic funds transfer.
- (e) Before final payment under the Subcontract, or before settlement upon termination of the Subcontract, and as a condition precedent thereto, the Subcontractor shall execute and deliver to JPL a release of claims against the Institute arising under or by virtue of this Subcontract, other than any claims that are specifically excepted by the Subcontractor from the operation of the release in amounts stated in the release.
- (f) If the Subcontractor fails to return the release described in (d) above with the release either executed for the amount determined by JPL or with a different amount within 60 days of JPL's request, JPL may make final payment in the amount determined by JPL and the release (for the JPL-determined amount) described in (d) above will be deemed to have been executed and delivered by the Subcontractor.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.227-2 – 08/96]

(The provisions of this Article shall be applicable only if the amount of this Subcontract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Subcontractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor agrees to include, and require inclusion of, this Article in all First-tier Subcontracts at any tier for supplies or services (including construction and architect-engineer First-tier Subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

NOTICE TO JPL OF LABOR DISPUTES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.222-1 – 02/97]

- (a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, the Subcontractor shall immediately give notice to JPL. The initial notice shall include the following:
 - (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier First-tier Subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/First-tier Subcontractor and union data to include:
 - (A) Name, address and telephone numbers of the manufacturer/First-tier Subcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known.If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.
- (C) The Subcontractor agrees to insert the substance of this Article, including this paragraph (b), in any First-tier Subcontract to which a labor dispute may delay the timely performance of this Subcontract; except that each such First-tier Subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the First-tier Subcontractor shall immediately notify the next higher-tier First-tier Subcontractor or JPL, as the case may be, concerning the dispute.

NOTIFICATION OF OWNERSHIP CHANGES

CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A – E, CREI– 09/04] [FAR 15.215-19 10/97]

(This Article is applicable if it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2)

- (a) The Subcontractor shall make the following notifications in writing:

- (1) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify JPL within 30 days.
 - (2) The Subcontractor shall also notify JPL within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Subcontractor shall:
- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide JPL or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
- (c) The Subcontractor shall include the substance of this clause in all First-tier Subcontracts under this Subcontract that meet the applicability requirement of FAR 15.408(k).

ORDER OF PRECEDENCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
 - (1) The Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise, in the Schedule, and
 - (2) Any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise in the Schedule,
 - (3) (c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Subcontract that are required by their terms to be included in First-tier Subcontracts shall be required by the Subcontractor to take precedence in the First-tier Subcontract over any other provisions.

PREFERENCE FOR U.S.-FLAG AIR CARRIERS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.247-63 – 01/97]

(This Article does not apply to Subcontracts or First-tier Subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

PRINTING AND DUPLICATING

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, A - E – 09/04] [NFS 1852.208-81 – 10/01]

(This Article does not apply unless this Subcontract requires the Subcontractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) (a) NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), is hereby incorporated into this Article in its entirety.

Note 1: The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office, even though the distribution of these reports and materials may be effectuated by the Subcontractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Subcontractor or a First-tier Subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports, but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any Subcontractor or a First-tier Subcontractor such as JPL's or a Subcontractor's Telephone Directory or JPL's or a Subcontractor's internal newsletter; (ii) public information, education and public service documents, and award certificates printed for JPL's or a Subcontractor's usage rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical, or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL, Subcontractor, or First-tier Subcontractor representatives, where Government attendance is only incidental, and the Subcontract does not expressly require Government approval of the proceedings.

- (b) To the extent that it applies to First-tier Subcontractors, the Subcontractor will implement NASA Policy Guideline (NPG) 1490.5A, Procedural Guidance for Printing, Duplicating and Copying Management, for all printing, duplicating, copying, forms, and mail management related to the performance of this Subcontract.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Subcontractor to the JPL Subcontracts Manager for submission to the NASA Printing Management Officer through the Contracting Officer.

PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE

[CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04]

The Subcontractor, its employees, agents and First-tier Subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Subcontract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Subcontractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence. The Subcontractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Subcontractor shall include this provision in any First-tier Subcontract involving travel subject to JPL approval or requiring that the First-tier Subcontractor utilize a privately owned (noncommercial) aircraft.

PROHIBITION OF SEGREGATED FACILITIES

CT, FP_NR&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E – 09/04 FAR 52.222-21

(The following Article is applicable to Subcontracts where FAR 52.222-26, Equal Opportunity is applicable)

Incorporate by reference FAR 52.222-21, Prohibition of Segregated Facilities

RELEASE OF INFORMATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Subcontractor agrees that all information released by the Subcontractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Subcontractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")
- (b) The Subcontractor agrees to insert this clause including this paragraph in all First-tier Subcontracts.

RELEASE OF INFORMATION - PRELIMINARY ENGINEERING REPORT (PER) SUBCONTRACTS

[A - E - 09/04]

(This Article applies only if this Subcontract requires the Subcontractor to prepare a Preliminary Engineering Report [PER]. and supersedes the Article entitled "Release of Information.")

The A - E agrees not to make, or cause to be made, or permit any of its First-tier Subcontractors (including lower-tier First-tier Subcontractors) to make, any public disclosure whatsoever relative to this Subcontract or any lower-tier subcontract (including any information generated there under), without first submitting three copies of the text of such planned disclosure to JPL to the attention of the Subcontracts Manager and awaiting receipt of written approval from JPL concerning the manner, degree and extent of such public disclosure. The A - E further agrees to be bound by the decision of JPL in such matters.

REQUIREMENTS FOR REGISTRATION OF DESIGNERS

[A - E - 09/04] [FAR 52.236-25 - 06/03]

(Work performed outside the United States is exempt from the requirements of this Article.)

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in the State of California.

RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR

[A - E - 09/04] [FAR 52.236-23 - 04/84]

- (a) The Subcontractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Subcontractor under this Subcontract. The Subcontractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither JPL's review, approval or acceptance of, nor payment for, the services required under this Subcontract shall be construed to operate as a waiver of any rights under this Subcontract or of any cause of action arising out of the performance of this Subcontract, and the Subcontractor shall be and remain liable to the Institute in accordance with applicable law for all damages to the Institute or the Government caused by the Subcontractor's negligent performance of any of the services furnished under this Subcontract.
- (c) The rights and remedies of the Institute provided for under this Subcontract are in addition to any other rights and remedies provided by law.
- (d) If the Subcontractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.225- 13 - 07/00]

Incorporate by reference FAR 52.225- 13, Restrictions on Certain Foreign Purchases.

SMALL BUSINESS SUBSUBCONTRACTING PLAN

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.219-9 – 01/02]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (e) If there will be any First-tier Subcontracting under this Subcontract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the Subcontractor agrees to submit for JPL approval a First-tier Subcontracting Plan (Plan) that separately addresses First-tier Subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBzone small business concerns, small disadvantaged business, and women-owned small business concerns. The Subcontractor further agrees to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this Subcontract.
- (f) If a Plan is required under this Subcontract, SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," are deliverables, which must be submitted by the Subcontractor to the JPL Subcontracts Manager in accordance with the instructions on the forms.
- (g) It is understood and agreed that the failure of the Subcontractor to comply in good faith with the Article of this Subcontract entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns," or with any Plan required to be included in this Subcontract, shall be a material breach of this Subcontract.

SMALL BUSINESS SUBSUBCONTRACTING REPORTING

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [NFS 1852.219-75 – 05/99]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (h) The Subcontractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.
- (i) The Subcontractor shall include this clause in all First-tier Subcontracts that include the Article titled "Small Business Subcontracting Plan" (FAR 52.219-9)

STOP WORK ORDER

[CT, FP-NR&D, FP-R&D, A - E – 09/04] [FAR 52.242-15 - 08/89]

- (a) JPL may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this Subcontract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this Article. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, JPL shall either:
 - (1) Cancel the stop work order; or
 - (2) Terminate the work covered by such order either for convenience of the Institute or the Government or, if appropriate, for default.
- (b) If a stop work order issued under this Article is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. JPL shall make an equitable adjustment in the delivery schedule, the Subcontract amount, and in any other provisions of the Subcontract that may be affected, and the Subcontract shall be modified, in writing, accordingly, if:
 - (1) The stop work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this Subcontract; and

- (2) The Subcontractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; provided that, if JPL decides the facts justify the action, it may receive and act upon the claim asserted at any time before final payment under this Subcontract.
- (c) If a stop work order is not canceled and the work covered by the order is terminated for the convenience of the Institute or the Government, JPL shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- (d) If a stop work order is not canceled and the work covered by the order is terminated for default, JPL shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 22.305 - 07/95; 52.222-4 - 09/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to Subcontracts for supplies, materials, or articles ordinarily available in the open market, Subcontracts for transportation by land, air, or water, or for the transmission of intelligence, Subcontracts of \$100,000 or less, Subcontracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and Subcontracts (or portions of Subcontracts) for supplies in connection with which any required services are merely incidental to the Subcontract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), Subcontracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Act, and Subcontracts for commercial items.
- (b) FAR clause 52.222-4 (Sept 2000) is hereby incorporated by reference in total, except that:
 - (1) The words “JPL Subcontracts Manager or JPL’s Contracting Officer” shall be substituted for the words “Contracting Officer” wherever they appear;
 - (2) The word “Subcontractor” shall be substituted for the words “Prime Contractor” wherever they appear; and
 - (3) The words “with JPL” shall be substituted for the words “Federal Subcontract with the same Prime Subcontractor” wherever they appear.

**SUBCONTRACTOR AND FIRST-TIER SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION
OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E CREI- 09/04] [FAR 15.403-4 - 10/00; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Subcontract or any modification exceeds \$550,000.)

(a) Subcontractor Cost or Pricing Data.

- (1) Whenever the negotiated price of the basic Subcontract, or the negotiated price of any change, or other modification to this Subcontract is expected to exceed \$550,000, the Subcontractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Subcontract is for a commercial item). Whenever certified cost or pricing data are required, the Subcontractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

(A)

- (i) Basic Subcontracts. In lieu of submitting cost or pricing data for the basic Subcontract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
- (ii) Subcontract Modifications. In lieu of submitting cost or pricing data for modifications under this Subcontract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Subcontractor may submit a written request for exception by submitting the information described under paragraph (B), below.
- (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
- (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
 - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government Subcontract, proof that an exception has been granted for the schedule item.
- (iii) Information on modifications of Subcontracts or First-tier Subcontracts for commercial items. If (i) the original Subcontract or First-tier Subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a Subcontract or First-tier Subcontract for a commercial item; and (ii) the modification (to the Subcontract or First-tier Subcontract) is not exempted based on one of

these exceptions, then the Subcontractor may provide information to establish that the modification would not change the Subcontract or First-tier Subcontract from a Subcontract or First-tier Subcontract for the acquisition of a commercial item to a Subcontract or First-tier Subcontract for the acquisition of an item other than a commercial item.

- (C) The Offeror/Subcontractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Subcontractor's determination of the prices to be offered in the catalog or marketplace.

(b) First-tier Subcontractor Cost or Pricing Data.

- (1) Before awarding any First-tier Subcontract expected to exceed \$550,000 when entered into, or before pricing any First-tier Subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Subcontractor shall require the First-tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the First-tier Subcontract or modification is eligible for an exception listed in paragraph (a), above.
- (2) The requirement for obtaining certified cost or pricing data with respect to any First-tier Subcontract change or other modification does not apply to any First-tier Subcontract change or modification, at any tier, where this Subcontract is a firm fixed-price or firm fixed-price with escalation Subcontract unless such change or other modification results from a Subcontract change or other modification to this Subcontract, nor does it apply to a First-tier Subcontract change or other modification, at any tier, where this Subcontract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Subcontract.
- (3) The Subcontractor shall require the First-tier Subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the First-tier Subcontract or First-tier Subcontract modification.
- (4) In each First-tier Subcontract that exceeds \$550,000 when entered into, the Subcontractor shall insert either:
 - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the First-tier Subcontract; or
 - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Subcontract, or any cost reimbursable under this Subcontract, was increased by any significant amount because (i) the Subcontractor or a First-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a First-tier Subcontractor or prospective First-tier Subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction.
- (2) Any reduction in the Subcontract price under paragraph (1) above due to defective data from a prospective First-tier Subcontractor that was not subsequently awarded the First-tier Subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual First-tier Subcontract or (ii) the actual cost to the Subcontractor, if there was no First-tier Subcontract, was less than the prospective First-tier Subcontract cost estimate submitted by the Subcontractor; provided, that the actual First-tier Subcontract price was not itself affected by defective cost or pricing data.
- (3)
 - (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:

- (i) The Subcontractor or First-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
- (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Subcontractor or First-tier Subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
- (iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.
- (iv) The Subcontractor or First-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(B)

- (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Subcontract price reduction if:
 - a. The Subcontractor certifies to the Contracting Officer that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
 - a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data or
 - b. The Government proves that the facts demonstrate that the Subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the Subcontract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Subcontractor's defective pricing including:
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Subcontractor or First-tier Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

TECHNICAL DIRECTION

FP-NR&D, LH/T&M, T&MC, FPC, A - E, FP-R&D, RSA – 09/04 NFS 1852.242-70 – 09/03

- (a) Performance of the work under this Subcontract is subject to the written technical direction of the Contract Technical Manager (CTM). "Technical direction" means a directive to the Subcontractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Subcontractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements of this Subcontract.
- (b) The CTM does not have the authority to, and shall not, issue any instruction purporting to be technical direction that--
 - (1) Constitutes an assignment of additional work outside the statement of work;
 - (2) Constitutes a change as defined in the changes clause;
 - (3) Constitutes a basis for any increase or decrease in the total estimated Subcontract cost, the fixed fee (if any), or the time required for Subcontract performance;

- (4) Changes any of the expressed terms, conditions, or specifications of the Subcontract; or
 - (5) Interferes with the Subcontractor's rights to perform the terms and conditions of the Subcontract.
- (c) All technical direction shall be issued in writing by the CTM.
- (d) The Subcontractor shall proceed promptly with the performance of technical direction duly issued by the CTM in the manner prescribed by this clause and within the CTM's authority. If, in the Subcontractor's opinion, any instruction or direction by the CTM falls within any of the categories defined in paragraph (b) of this clause, the Subcontractor shall not proceed but shall notify the JPL Subcontracts Manager in writing within 5 working days after receiving it and shall request the Subcontracts Manager to take action as described in this clause. Upon receiving this notification, the Subcontracts Manager shall either issue an appropriate Subcontract modification within a reasonable time or advise the Subcontractor in writing within 30 days that the instruction or direction is--
- (1) Rescinded in its entirety; or
 - (2) Within the requirements of the Subcontract and does not constitute a change under the changes clause of the Subcontract, and that the Subcontractor should proceed promptly with its performance.
- (e) Any action(s) taken by the Subcontractor in response to any direction given by any person other than the Subcontracts Manager or the CTM shall be at the Subcontractor's risk.

TERMINATION FOR ARCHITECTS AND ENGINEERS

[A - E - 09/04] [FAR 52.249-7 - 04/84]

- (a) JPL may terminate this Subcontract in whole or, from time to time, in part, for the convenience of the Government or the Institute or because of the failure of the Subcontractor to fulfill the Subcontract obligations. JPL shall terminate by delivering to the Subcontractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Subcontractor shall:
 - (1) Immediately discontinue all services affected (unless the notice directs otherwise); and
 - (2) Deliver to JPL all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Subcontract, whether completed or in process.
- (b) If the termination is for the convenience of the Institute, an equitable adjustment in the Subcontract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- (c) If the termination is for failure of the Subcontractor to fulfill the Subcontract obligations, JPL may complete the work by Subcontract or otherwise and the Subcontractor shall be liable to the Institute for any additional cost for completion of the work.
- (d) If, after termination for failure to fulfill Subcontract obligations, it is determined that the Subcontractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Institute.

The rights and remedies of the Institute provided in this Article are in addition to any other rights and remedies provided by law or under this Subcontract.

TOXIC CHEMICAL RELEASE REPORTING

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.223-14 - 10/00]

(This Article is applicable to all Subcontracts where the value of the Subcontract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Subcontract, the Subcontractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 08/01] [NFS 1852.227-87 - 04/89]

(This Article applies to Subcontracts and First-tier Subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data that are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station Subcontractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Subcontractor agrees, when specifically directed in writing by the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Subcontractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Subcontractor or any First-tier Subcontractors as set forth in the "Rights in Data" Article of this Subcontract, nor the protection of any proprietary technical data that may be available to the Subcontractor or any First-tier Subcontractor under that Article.
- (e) The Subcontractor agrees to include this Article, including this paragraph (e), in all First-tier Subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

Jet Propulsion Laboratory
California Institute of Technology
4800 Oak Grove Drive
Pasadena, California 91109-8099
(818) 354-4321

RELEASE OF INFORMATION

This Subcontract with the Jet Propulsion Laboratory (JPL) constitutes a First-tier Subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, Subcontractors and First-tier Subcontractors have played a large role in this process.

In accordance with this policy, the Subcontractor may want to issue press releases or plan publicity and advertising from time to time, and the Subcontractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Subcontractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Subcontractor shall send the materials to the JPL Media Relations Office, mail stop 186-120, stating the Subcontractor's deadlines and referencing this Subcontract number.

In the event this Subcontract is a cost-reimbursement type Subcontract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.

NOTIFICATION TO PROSPECTIVE SUBCONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and Subcontractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/Subcontractor or prospective supplier/Subcontractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, (818) 354-9999. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



Certifications

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

I. CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the Subcontract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed First-tier Subcontractors for specific time periods) it will:
 - (1) Obtain identical certifications from proposed First-tier Subcontractors before the award of First-tier Subcontracts under which the First-tier Subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain such certifications in its files; and
 - (3) Forward this certification and the following notice to the proposed First-tier Subcontractors:

NOTICE TO PROSPECTIVE FIRST-TIER SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certificate of Nonsegregated Facilities must be submitted before the award of a First-tier Subcontract under which the First-tier Subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each First-tier Subcontractor for all First-tier Subcontracts during a period (i.e., quarterly, semi-annually, or annually).

- (d) By commencing performance of the Subcontract work, the selected Subcontractor certifies to the Nonsegregated Facilities provisions above.

II. CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

(A Certification of Anti-Kickback Compliance must be submitted prior to award.)

By submission of an offer, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Subcontract. By commencing performance of the Subcontract work, the selected Subcontractor certifies to Anti-Kickback Compliance.

III. CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

(The Subcontractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Subcontract. By commencing performance of the Subcontract work, the selected Subcontractor certifies to the Americans with Disabilities Act compliance.

IV. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) By submission of an offer, the offeror certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal Subcontract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal Subcontract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Subcontracts Manager; and
 - (3) He or she will include the language of this Certification in all First-tier Subcontract awards at any tier and require that all recipients of First-tier Subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Subcontract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

V. CERTIFICATION OF FULL DISCLOSURE BY THE SUBCONTRACTOR/OFFEROR REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE U.S. FEDERAL GOVERNMENT AT TIME OF AWARD

(This certification applies to Subcontracts with a Subcontract value exceeding \$25,000.)

- (a) By submission of an offer, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any Subcontract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Subcontract work, the selected Subcontractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

VI. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

(This certification is required prior to award of a Subcontract with an estimated value, including any options, over \$100,000.)

- (a) Submission of this certification is a prerequisite for making or entering into this Subcontract imposed by Executive Order 12969, August 8, 1995.
- (b) By submission of an offer, the offeror certifies that it has accepted and certifies to all the Terms and Conditions found in the Federal Acquisition Regulation (FAR) at 52.223-13.

VII. CERTIFICATION REGARDING SUBCONTRACTOR REPRESENTATION BY FORMER CALTECH/JPL EMPLOYEES

(The Subcontractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it has no previous JPL or Caltech employee involved in this procurement who has been gone from JPL for less than one year, who participated personally and substantially in the subject matter while working for JPL or Caltech, who was officially responsible for the subject matter while working for JPL or Caltech, and who owns or represents the proposer's organization.



ASBESTOS NOTIFICATION

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Subcontractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and Subcontractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of Subcontractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4-1771 to review these documents or if there are any questions.

Notice of Potential Tax Withholding

JPL is legally obligated to withhold federal and/or state income tax from certain contractor and consultant payments when required by law. Withholding may be required under the following circumstances:

1. Nonresident Independent Contractor/Consultant State Source Income Tax

Payments made to California nonresident contractors or consultants, including sole proprietors, corporations, limited liability companies, and partnerships, that do not have a permanent place of business in CA, or that are not registered to do business in California, are subject to a seven percent state income tax withholding for services performed in California. No withholding is required on payments for goods, or for services performed outside California. See State Tax Form 587 (Nonresident Income Allocation Worksheet) and Form 590 (Withholding Exemption Certificate).

2. Nonresident (and Resident) Alien Federal Income Tax

Payments made to nonresident alien contractors/consultants are subject to a thirty percent federal income tax withholding for services performed in the U.S. unless an exception applies. A nonresident alien from a country with an income tax treaty with the United States may be exempt from tax under the Self-employment Article of the treaty if the individual satisfies the conditions of the treaty article. A nonresident alien from a non-treaty country may claim a daily personal exemption amount. Such nonresident aliens who have a U.S. taxpayer identification number (TIN) – either a U.S. Social Security Number or Individual Taxpayer Identification Number - can submit Federal Tax Form 8233 (Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual) to claim a withholding reduction or exemption. No exemption is available for nonresident aliens who lack a TIN. Nonresident aliens not claiming such an exemption should submit Federal Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). For more information, refer to IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Resident aliens should complete Federal Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) to submit a U.S. taxpayer identification number. Resident aliens with no U.S. taxpayer identification number will be subject to back-up withholding, currently at a rate of twenty-five percent.

3. Federal or State Tax Liens or Levies

JPL may be required to withhold payments in an amount necessary to satisfy tax liens or levies or judgments duly issued against contractors or consultants by cognizant tax or judicial authorities.

Disclaimer: JPL is not liable for amounts incorrectly withheld. However, if JPL determines that amounts have been incorrectly withheld, and provided that such amounts have not been remitted to tax authorities, JPL shall refund such amounts to the contractor/consultant.